***THE HONBLE SRI JUSTICE V ESWRAIAH**

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+ WRIT PETITION NO. 22052 OF 2004

Dated 29-03-2005

 # 1. J.K. JOHNSON, S/o. P.E.Johnson, aged about 46 years,

Senior Technician, Hindustan Aeronauticals Limited,

R/o. 12- 5-149/12, Vijayapuri, Secunderabad – 500 017

And two others

PETITIONERS

VERSUS

1. **The Principal Chief Conservator of Forests, Tulja Bhavan, M.J. Market, Hyderabad**

And two others

RESPONDENTS

! Counsel for Petitioner: Mr. B. NALIN KUMAR

^Counsel for Respondents: G.P. FOR FORESTS

< GIST:

> HEAD NOTE:

? Cases referred:

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY NINTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

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WRIT PETITION NO : 22052 of 2004

Between:

1 J.K. Johnson, S/o P.E. Johnson, aged about 46 years, Senior

Technician, Hindustan Aeronauticals Limited, R/o 12-5-149/12,

Vijayapuri, Secunderabad - 500 017.
2 Shaik Ibrahim, s/o Dastagiri, Security Officer,
Bhadrachalam Paper Mill, R/o H.No. 139/140, Ayappa Colony,

Old Alwal, Secunderabad.
3 S. Indershan Reddy, S/o S. Linga Reddy, Agriculturist,
R/o 2-4-135, Opp: Tadband Hanuman Temple, Sainikpuri,

Secunderabad.

..... PETITIONERS

AND

1 The Principal Chief Conservator of Forests, Tulja Bhavan,

M.J. Market, Hyderabad.
2 The Conservator of Forests, Nizamabad Circle, Nizamabad.
3 The Sub Inspector of Police, Kolcharan Police Station, Medak District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a writ or Certiorari or other appropriate direction in the nature of writ calling for records resulting in the orders dated 9-10-2004 bearing RC. No. 36934/2004/WL-4 issued by the first respondent the order dated. 4-10-2004 bearing Rc.No. 4178/2004/MI (i) and the order dated 25-7-2004 (10-8-2004) bearing POR No. 38/C/2004-05 Office File No. 4178/2004/M1, passed by the 2nd respondent and quash the same as arbitrary, discriminatory, without jurisdiction and null and void and consequently direct the respondents to release the vehicle No. AP 12D 703 and the riffles seized under the above orders together with the connected documents to the petitioners in the interest of justice.

Counsel for the Petitioners: MR.B.NALIN KUMAR

Counsel for the Respondents: GP FOR FORESTS

The Court made the following :

ORDER:

The Conservator of Forests, Nizamabad Circle, Nizamabad(2nd respondent) by his proceedings in POR No. 38/C/2004-05 dated 25.7.2004, Office file No. 4178/2004/M1, dated 10.8.2004, while compounding the offence on payment of compensation of Rs.25,000/-, forfeited the vehicle jeep No. AP 12 D 703 and two

riffles of the petitioners to the State under Section 39 (1) (d) of Wild Life (Protection) Act, 1972 and the third petitioner, who is the owner of the said vehicle, was informed that the said vehicle has been forfeited to the Government vide proceedings of the Conservator of Forests, Nizamabad Circle, dated 4-10-2004 in Rc No. 4178/2004/Ml(i). Against the said orders, the first petitioner filed an appeal before 1st respondent-the Principal Chief Conservator of Forests, which was dismissed by his order-dated 09.10.2004 in RC No. 36934/2004/WL-4. Questioning the aforesaid orders forfeiting the vehicle and two riffles to the State, the present writ petition has been filed.

Heard the Counsel appearing for the petitioners as well as the learned Government Pleader for Forests appearing on behalf of the respondents.

The brief facts that led to filing of the present writ petition are as follows:-

On the intervening night of 24/25-7-2004 the S.I of Police-third respondent along with other constables was checking the vehicles at Pothamsettipalli X Roads. In the course of his check, he stopped a jeep bearing No. AP 12 D 703 coming from Medak side checked and found one gunny bag tied on the front side bumper of the jeep. On enquiry and on verification of the gunny bag he found hunted and killed one forest pig in one bag and the three rabbits in another bag. The carcass of the said forest pig, three rabbits along with 2 riffles was seized under the cover of Panchanama. Then, he registered a case in crime No. 43 of 2004 under Section 9 of Wild Life (Protection) Act, 1972. The jeep was not at all seized under the cover of Panchanama. But what was seized are only the carcass of the forest pig and 3 rabbits along with 2 riffles. The petitioners were taken into custody. Thereafter, the petitioners have requested to compound the offence and accordingly a statement was taken from the petitioners on the same day i.e., 25-7-2004 in which they have stated that they went to Sangareddy town for attending the Telangana meeting and they dropped one P. Kishta Goud in Kolcharam village and proceeded. On the way, they met two persons possessing one forest pig and rabbits in a gunny bag. They only purchased the said animals but not hunted them. The weapons, which they were holding, are only meant for their self-defence and they are having valid permits to hold the same. Accordingly, they pleaded ignorance of the legal consequences in purchasing the said dead animals and requested to excuse them and to compound the offence by imposing any penalty.

In view of the compounding statement given by the petitioners, the Conservator of Forests, Nizamabad Circle, Nizamabad by his proceedings No.4178/2004/M1 dt.10-8-2004 compounded the offence and ordered to pay a sum of Rs.25,000/- towards compensation. Further, while compounding the said offence, a condition was imposed in the said order stating that on payment of the compensation amount in full, the seizures detailed namely vehicle No. AP 12 D 703 and (2) riffles shall be forfeited to the State under Section 39(1)(d) of the Wild Life (Protection) Act 1972. Hence, the writ petition.

Learned Counsel for the petitioners submits that once the offence has been compounded under Section 54 of the Wild Life (Protection) Act, 1972, by way of imposition of compensation in respect of the offence from the persons who have been suspected to have committed an offence and on payment of such sum of money, the suspected persons, if in custody, shall be discharged and no further proceedings in respect of the offence shall be taken against such persons. He further submits that in respect of the offence in question, as there is no minimum period of imprisonment prescribed and for such offence the maximum period of imprisonment that can be extended up to 3 years or can be imposed only fine and therefore the authorities have compounded the offence in question. The learned counsel for the petitioners also submits that once the offence is compounded, it is not open for the respondents to confiscate the seized goods. Hence, he sought the direction for release of the seized articles.

On the other hand, the learned Government Pleader appearing for the respondents submits that under Section 39 (1) (d) of Wild Life (Protection) Act, 1972, every vehicle, vessel, weapon, trap or tool that has been used for committing an offence and has been seized under the provisions of this Act, such property cannot be released in any circumstances unless the Chief Field Warden passes any order for release of the vehicle. Hence, the writ petition does not sustain.

The S.I of Police in the presence of mediators seized the carcass of one forest pig and three rabbits and took the petitioners, who were accused in the said crime, into his custody. A reading of the crime report and the seizure Panchanama, discloses that, prima facie, the petitioners were suspected to have committed the said crime, which is serious in nature, under Wild Life (Protection) Act. It is also to be observed that the respondents without making any enquiry and without stating anything

whether the offence committed by the petitioners relates to such offence, where the minimum imprisonment is prescribed or not, compounded the offence and hence it appears that there are lapses on the part of the compounding authority in compounding the offence. Whatever may be the reasons for compounding the offence, unless the case is tried and the accused are convicted by the Criminal Court, there is no possibility of confiscating the seized goods under Section 39 (1)(d) of the Act. The compounding of offence is only against the persons, but not against the seized goods. Once the offence against the person is compounded by imposing the compensation, it cannot be said that there is a conviction enabling the Forest Department to treat the seized goods as Government property. There cannot be any automatic presumption to treat the seized goods as Government property unless there is trial and conviction in the criminal proceedings or in the departmental proceedings conducted by the authorities. Therefore, I am of the opinion that unless there are specific guidelines issued by the Chief Conservator of Forests, it is not just and proper for the respondents to compound such kind of offences, which are serious in nature, which will also encourage destruction of wild life.

Admittedly, there is no procedure contemplated for the forfeiture of the vehicle, vessel, weapon, tool etc. The only procedure contemplated under Section 51(2) of the Act is that when any person is convicted of an offence against this Act, the Court trying the offence may order for forfeiture of the vehicle, vessel, weapon, trap or tool that has been used in connection of the said offence to the State. Admittedly, there is no trial or conviction that has been made in the instant case. The respondents have liberally compounded the offence. Since the offence has been compounded without there being any trial either in the departmental proceedings or in the criminal proceedings, I am of the opinion that the said vehicle and riffles cannot be forfeited.

For the aforesaid reasons, the writ petition is allowed and the respondents are directed to release the said vehicle and riffles of the petitioners forthwith. No costs.

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V. ESWARAIAH, J

L.R Copy to be marked

Dt 29-3-2004

NB;-

Mark a copy to the Chief Conservator of Forests.

B/o.

Kvrk

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Tuesday the Twenty Ninth day of March, Two thousand and Five.

Registrar

To

One Fair Copy to the Hon'ble Sri Justice V. Eswaraiah – for his Lordships kind perusal

1 The Principal Chief Conservator of Forests, Tulja Bhavan,

M.J. Market, Hyderabad.
2 The Conservator of Forests, Nizamabad Circle, Nizamabad.
3 The Sub Inspector of Police, Kolcharan Police Station, Medak District.

4. Two CCs to GP for Forests, High Court Buildings,Hyderabad(OUT)

5. 2 CD copies.

6. 8 L.R. Copies.

7. The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.

8. The Secretary, A.P. Advocates Association Library, High Court.